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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re DANIEL P. et al., Persons Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

RAMONA P.,

Defendant and Appellant.

D068048

(Super. Ct. No. EJ3680)

APPEAL from orders of the Superior Court of San Diego County, Gary M. Bubis,
Judge. Affirmed.

Elizabeth C. Alexander, under appointment by the Court of Appeal, for Defendant
and Appellant.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy County
Counsel, and Daniela Davidian, Deputy County Counsel, for Plaintiff and Respondent.

Ramona P. appeals orders under Welfare and Institutions Code section 366.26¹ terminating her parental rights as to her four children and selecting adoption as their permanent plan. She contends the court erred in finding there was not a beneficial parent-child relationship between her and her children that precluded the termination of her parental rights. (See § 366.26, subd. (c)(1)(B)(i).) We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Background, Jurisdiction, and Disposition

Ramona and Joe P. wed in 2006, divorced in 2007, and resumed a relationship in 2008. They had four children together: Daniel (age seven when the petition was filed), Joe (age three at filing), Angelina (age two at filing), and Alan (newborn at filing).²

On June 2, 2013, the San Diego County Health and Human Services Agency (Agency) was notified Ramona and Alan tested presumptively positive for amphetamines when she recently gave birth to him. Ramona was homeless, and acknowledged receiving limited prenatal care because she was "scared, lazy, and depressed." The Agency filed petitions on behalf of the children under section 300, subdivision (b), alleging the children suffered, or were at substantial risk of suffering, serious physical

¹ All statutory references are to the Welfare and Institutions Code.

² The juvenile court found Joe P. was Alan's alleged father and the other children's presumed father. We will refer to Joe P. as "the father" because he and one of his children have the same first name. The father is not a party to this appeal; we mention him only as relevant to Ramona's appeal.

harm or illness due to the parents' excessive drug use and leaving the three older children with a relative and not returning for them.³

Ramona began using methamphetamine 10 years earlier, when she was 15. She admitted using methamphetamine during her pregnancies with Joe, Angelina, and Alan—including three times the day before Alan was born, and once during the week following his birth.⁴ Ramona told a social worker she did not believe her drug use impacted her ability to safely parent; she explained she would not use drugs in front of the children but would "step away, smoke a couple hits, and then be right back." Ramona entered a long-term drug treatment program on June 14, but left of her own accord on June 25.

Daniel was developmentally behind, needed refills of his medication for attention deficit hyperactivity disorder, had rotting teeth, and significant attendance issues at school. Joe had developmental issues with speech; was not potty trained; was having digestive tract issues; and may have had cavities. Angelina had many of the same issues as Joe. Alan was healthy and gaining weight.

Ramona told the Agency the father had a history of domestic violence, including one incident in 2007 that caused her to lose a pregnancy and led to their divorce.

Daniel and Alan were detained in the home of their paternal aunt Vanessa. Daniel was happy with the placement, but exhibited anxiety about being separated from his

³ The petitions also alleged counts under section 300, subdivision (g), but the court dismissed these counts.

⁴ The Agency received confirmatory drug test results showing Ramona and Alan tested positive for amphetamine and methamphetamine at Alan's birth.

parents. Alan was adjusting well. Joe and Angelina were detained in the home of their paternal aunt Y., who lived in the same apartment complex as Vanessa. Joe and Angelina adjusted well to their placement and did not ask about their mother. The caregivers attended to the children's developmental, medical, and dental needs.

On July 29, 2013, the juvenile court made true findings on the petitions, removed the children from parental custody, and ordered the Agency to provide the parents reunification services. Ramona's case plan included individual counseling, parenting education, substance abuse assessment and treatment, and domestic violence education if recommended by her individual therapist. The children remained placed with their paternal aunts. The court set a six-month review hearing for January 2014 and a 12-month review hearing for July 2014.

Six-month Review

The Agency reported the children's needs were being met by their caregivers and they were thriving in their placements.

Ramona and the father remained in a relationship and used drugs together until late in the six-month review period. Ramona participated sporadically in drug treatment in August. In September and October, she failed to appear for three scheduled drug tests. In October and November, she tested positive three times. She enrolled in a new treatment program on October 28, but walked out on October 30 and was terminated the following day. Ramona admitted attending a meeting with the Agency while under the influence of methamphetamine. She began outpatient treatment at the McAlister Institute

in November.⁵ She tested positive for methamphetamine November 19, but tested negative at the end of November and December. Ramona recognized the need for treatment and to avoid drug-use triggers, including remaining in a relationship with the father while his addiction is untreated.

Ramona was terminated from a parenting class for missing too many sessions. She began attending weekly parenting classes at the McAlister Institute. She had not yet begun individual therapy.

Ramona missed some scheduled visits with her children, but received positive reports regarding the supervised visits she attended.⁶ Daniel enjoyed the visits and was sad after they ended. Angelina and Joe yelled " 'momma' " when arriving at visits. Alan appeared to bond with Ramona during visits.

At the six-month review hearing on February 20, 2014, the juvenile court ordered that Ramona receive an additional six months of reunification services.

Twelve-month Review

The children continued doing well in their placements, and their caregivers were meeting their needs.

⁵ The McAlister Institute "provides alcohol and drug education, parenting classes, individual and group counseling sessions, and individualized treatment planning."

⁶ Ramona's visits initially were inconsistent due to challenges between her and the caretakers supervising the visits. To resolve the issue, the Agency moved her visits to a visitation center in April.

Ramona tested positive for methamphetamine in March, but tested negative thereafter. She completed her parenting education, but attended only three individual therapy sessions between January and July.

Between January and April, Ramona did not visit her three older children. She consistently visited Alan beginning in February. Once the older children's visits were moved to a visitation center in April, Ramona consistently visited them and was appropriate.

The Agency recommended that the court terminate Ramona's reunification services and set a section 366.26 hearing. Ramona had only a brief period of sobriety in comparison with her long history of drug use; she had not demonstrated the ability to stay away from people, places, and things that trigger her drug use; and she needed therapy for domestic violence and mental health issues, but had only attended three counseling sessions.

In an addendum report, the Agency expressed additional concerns and continued recommending termination of Ramona's services. Although Ramona completed a parenting class, some visits were described as "unstructured," "chaotic," and "overwhelming at times"; Ramona was "told multiple times to put her phone down"; she played "cussing rap music" during visits; and had difficulty redirecting the children's behavior. Ramona requested additional visits from the children's caregivers, then missed all but two. Regarding drug treatment, Ramona was unable to identify her "clean date," the identity of her sponsor, or what step of the 12-step program she was on.

After the 12-month review hearing on September 10 and 12, 2014, the court ordered that the Agency continue providing reunification services to Ramona until the 18-month date. The court terminated the father's services.

Eighteen-month Review

The children continued to do well in their placements. Their visits with Ramona went well, but Daniel did not want to visit her anymore and was addressing that in therapy.

An Agency social worker testified that after the 12-month review hearing, she was prepared to give Ramona unsupervised visits and "get these kids fast-tracked home to her." However, the social worker learned that within 48 hours of the hearing, Ramona and the father were involved in a bar fight. The social worker also learned they had been communicating via online social media about continuing their relationship. In several messages, Ramona asked the father not to reveal to the social worker that they had been communicating,⁷ and in another she promised to let the father see the children.

Ramona completed her drug treatment program in October 2014, and had tested negative for drugs for the previous six months. However, she still had not given her sponsor's name to the social worker. Ramona's therapist reported she had "almost completed all of her goals," but still needed counseling on domestic violence. Ramona

⁷ In one message, Ramona wrote, "don't say shit[;] erase my messages." In another, she wrote, "Please [J]oe don't [say] nothing [to the social worker] you promise me that you're not gonna [say] shit."

acknowledged the father is a trigger for her drug relapse and understood she should not be around him.

The social worker and Ramona testified at the 18-month review hearing. After "listen[ing] carefully to the testimony of the witnesses and the manner in which they testified," the juvenile court found Ramona is "kind of a manipulator." The court explained it viewed this case "as a drug case," and found "the father is clearly a major trigger in [Ramona]'s life [¶] It's clear that the father is her poison pill." The court found Ramona had not made substantive progress with her case plan and terminated her reunification services. The court set a section 366.26 hearing.

Section 366.26 Hearing

The Agency recommended the court terminate parental rights and order that the children be adopted by the paternal relatives with whom they had been placed. The children were highly adoptable and their caregivers were committed to adopting them and maintaining contact among the siblings, and were willing to allow postadoption parental visits as long as they remained in the children's best interests. A social worker described the children's relationships with their caregivers as "definitely attached, bonded. [The children] love them. [The children] . . . see them as their own mother and father." Joe and Angelina referred to their caregivers as "mom" and "dad;" Alan referred to his aunt as "mama"; and Daniel referred to his caregivers as his aunt and uncle. The children looked to the caregivers to meet their daily emotional and physical needs, and the children's development had improved since being placed with them. An Agency social

worker opined the benefits of adoption outweighed the benefits of maintaining the children's relationship with their mother.

The Agency reported Ramona had an " 'odd attendance record' " at domestic violence group sessions and was one missed session away from being terminated. Ramona did not enroll in the additional parenting education she and the social worker had discussed.

Paternal aunt Vanessa reported "Daniel had stated he does not care about his 'mom' and that he misses his 'dad.' " Vanessa thought Ramona neglected Daniel during visits in favor of the younger children. In March, Ramona canceled one visit, showed up late to another, and failed to confirm a third. Visits she attended went well, with the children calling Ramona "mom," "mama," and "mommy." Angelina cried at the end of some visits, but quickly composed herself. Some visits ended without any children seeming distraught. A social worker described Ramona's relationship with the children as, "at times, . . . like a parental figure . . . buying the food, bringing the clothes. But . . . I'd say it could be more like a relative or a family friend . . . especially with Alan since he [had never] even been placed in her care."

A social worker asked Daniel the day before the hearing to rate on a scale from one to 10 how much he loved living with his caregivers. He gave them a 10 and Ramona a five. When asked where he would like his siblings to live, Daniel indicated their current placements.

At the section 366.26 hearing, the juvenile court found by clear and convincing evidence the children were likely to be adopted and none of the circumstances listed in

section 366.26(c)(1)(B) existed. The Agency conceded Ramona regularly visited the children. The juvenile court did not make an express finding regarding parental visitation, but noted the children were "in very loving homes where they're happy" and "have looked to someone else to fulfill their parental needs." The court observed the caregivers' willingness to allow postadoption visits "shows the care . . . and the love these caregivers have for these kids that they would do what's necessary to keep them happy and to work in their best interests." The court terminated parental rights and referred the children to the Agency for adoptive placement, designating the caregivers as the prospective adoptive parents.

DISCUSSION

Ramona contends the juvenile court erred in finding there was not a beneficial parent-child relationship between her and her children within the meaning of section 366.26, subdivision (c)(1)(B)(i) that precluded the termination of her parental rights.

" 'At a permanency plan hearing, the court may order one of three alternatives: adoption, guardianship or long-term foster care. [Citation.] If the dependent child is adoptable, there is a strong preference for adoption over the alternative permanency plans.'

[Citation.] 'Once the court determines the child is likely to be adopted, the burden shifts to the parent to show that termination of parental rights would be detrimental to the child under one of the exceptions listed in section 366.26, subdivision (c)(1). [Citations.]

Section 366.26, subdivision (c)(1)(B)(i), provides an exception to termination of parental rights when "[t]he parents have maintained regular visitation and contact with the child

and the child would benefit from continuing the relationship." ' ' " (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1165.)

This court has interpreted "the 'benefit from continuing the [parent[-]child] relationship' exception to mean the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent[-]child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 (*Autumn H.*)).

"A parent asserting the parental benefit exception has the burden of establishing that exception by a preponderance of the evidence. [Citation.] It is not enough to show that the parent and child have a friendly and loving relationship. [Citation.] ' "Interaction between [a] natural parent and child will always confer some incidental benefit to the child" ' [Citation.] For the exception to apply, 'a *parental* relationship is necessary. . . .' [Citation.] ' "While friendships are important, a child needs at least one parent. Where a biological parent . . . is incapable of functioning in that role, the child should be given every opportunity to bond with an individual who will assume the role of a parent." . . . ' " (*In re J.C.* (2014) 226 Cal.App.4th 503, 529 (*J.C.*)). "Because a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet

the child's needs, it is only in an extraordinary case that preservation of the parent's rights will prevail over the Legislature's preference for adoptive placement." (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350 (*Jasmine D.*)).

Appellate courts have applied different standards of review to the parent-child beneficial relationship exception. (See *In re K.P.* (2012) 203 Cal.App.4th 614, 621.) Most courts initially applied the substantial evidence standard. (See *ibid.*; *J.C., supra*, 226 Cal.App.4th at p. 530.) However, our court recently applied a "hybrid standard," under which "[w]e apply the substantial evidence standard of review to the factual issue of the existence of a beneficial parental relationship, and the abuse of discretion standard to the determination of whether there is a compelling reason for finding that termination would be detrimental to the child." (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 395.)⁸ We will apply the hybrid standard.⁹

The juvenile court did not make an express finding regarding the first prong—whether Ramona "maintained regular visitation and contact" with the children. (§ 366.26, subd. (c)(1)(B)(i).) Although there was evidence Ramona's visits were at times inconsistent—including a four-month period during which she did not visit her

⁸ Division Three of this District also recently applied the hybrid standard. (See *J.C., supra*, 226 Cal.App.4th at p. 531.)

⁹ As a practical matter, the analysis is essentially the same under either standard of review. " '[E]valuating the factual basis for an exercise of discretion is similar to analyzing the sufficiency of the evidence for the ruling. . . . Broad deference must be shown to the trial judge. The reviewing court should interfere only " 'if [it] find[s] that under all the evidence, viewed most favorably in support of the trial court's action, no judge could reasonably have made the order [under review].' . . . " ' " (*Jasmine D., supra*, 78 Cal.App.4th at p. 1351.)

three older children—the Agency concedes Ramona "appears to have met this first prong." We accept this concession.

Ramona has not met her burden of showing the juvenile court abused its discretion in determining the benefits of continuing her parental relationship outweighed the benefits of a permanent plan of adoption. (See *Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Ramona's drug use precipitated the dependency case. Although she completed her treatment program, she maintained contact with the father even though she acknowledged he was a "huge trigger" for her drug use. She had been sober a relatively short period of time compared to her lengthy history of drug use. After the court gave her "a last chance" at the 12-month review hearing, she encountered the father *at a bar*, where a fight ensued. The court characterized this as "a very bad decision." She compounded this poor decisionmaking by concealing her communications with the father from the Agency, seeking his assistance in doing so, and promising to let him visit the children.¹⁰

The children had been out of Ramona's care for 22 months, which amounted to Alan's entire life, about half of Angelina's, over one-third of Joe's, and about one-fifth of Daniel's. Although the children appeared to enjoy their visits with Ramona, the social worker opined Ramona was "*at times . . . like a parental figure,*" but "*more like a relative or a family friend.*" (Italics added.) Some visits were "unstructured," "chaotic," and "overwhelming." Daniel did not want to visit Ramona at one point, and he reportedly told his caregivers he did not care about her. Some of the children were occasionally

¹⁰ Ramona also failed to complete the domestic violence counseling her therapist recommended, and failed to enroll in additional parenting classes.

upset when visits ended, but they were quickly consoled. Ramona did not introduce a bonding study or other evaluation of her relationship with her children. (See *In re S.R.* (2009) 173 Cal.App.4th 864, 869 ["the parties or the court may require a bonding study to illuminate the intricacies of the parent-child bond so that the question of detriment to the child may be fully explored"].)

Although the children referred to Ramona as their mother, a social worker opined the children "were definitely attached, bonded [to the caregivers]. [The children] love them," "see them as their own mother and father," and look to them to meet their daily emotional and physical needs. The caregivers were committed to adopting the children. All the children were thriving in their care. Daniel rated living with his caregivers twice as high as living with Ramona, and he preferred that his siblings be placed with their caregivers. The children's court-appointed special advocate noted, "The children seem to feel safe, cared for, loved, and connected in their current homes." A social worker opined the children's relationship with Ramona was not so significant that it outweighed the benefits permanency would offer them. The juvenile court did not abuse its discretion in reaching the same conclusion. (See *In re Casey D.* (1999) 70 Cal.App.4th 38, 53 ["The trial court was entitled to find the social worker credible and to give greater weight to her assessments and testimony."].)

DISPOSITION

The orders are affirmed.

HALLER, J.

WE CONCUR:

McCONNELL, P. J.

PRAGER, J.*

* Judge of the San Diego Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.